

COMPLIANCE PARTNERS LLP

WWW.COMPLIANCEPARTNERS.NET

1629 K STREET, NW
SUITE 300
WASHINGTON, DC 20006
TEL: (202) 905-0487 • FAX: (202) 449-1388
MAIL@COMPLIANCEPARTNERS.NET

September 18, 2009

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: In re Petition of Allband Communications Cooperative for Waiver of Sections 69.2(hh) and 69.601 of the Commission's Rules to Allow New Local Exchange Carrier to Participate in NECA Tariffs and Pools, CC Docket No. 96.45¹

In re Osirus Communications, Inc. Petition for Waiver of Commission's Rules to Participate in the NECA Pools and Tariffs and to Obtain Accelerated USF Support, CC Docket No. 96-45²

Dear Ms. Dortch:

On behalf of Michigan Access, Inc. ("Michigan Access"), and Custom Software, Inc. d/b/a M33 Access ("M33 Access"), this letter is submitted in the above-referenced dockets to provide additional information relative to these proceedings, and to correct certain factual discrepancies.

Background:

There are many issues involved in this proceeding. However, for M33 Access and Michigan Access, there is only one: bringing the benefits of Internet and telephone connectivity to the people of rural Northeast Michigan. A quote from Mr. Glenn Wilson, the president and founder of M33 Access and Michigan Access encapsulates the spirit underlying these companies:

When I get it so that every kid has high-speed Internet in my area, I'll feel good...I want digital learning for every kid, period. End of story. ... In order for our kids to compete tomorrow, we need the technology now.³

¹ *In re Petition of Allband Communications Cooperative, Waiver of Sections 36.611 and 36.612 and Associated Provisions of the Commission's Rules*, CC Docket No. 96-45 (filed Sept. 6, 2005).

² *In the Matter of Osirus Communications, Inc., Petition for Waivers of the Commission's Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support*, CC Docket No. 96-45 (filed Oct. 2, 2007).

³ Keith Cave, *Wired*, TRUE NORTH, Spring 2006, at 16 (TRUE NORTH), attached hereto as Attachment 1.

In areas hit hard by the recession and unemployment, Mr. Wilson feels a deep sense of personal responsibility: “We need two things desperately here: infrastructure and the population to drive it with a good labor force. ... My part is to make sure we have the technological infrastructure.”⁴ From its inception to the present, the sole motivating factor behind M33 Access’ success is Mr. Wilson’s personal commitment to ensuring broadband connectivity for each and every home in rural Northeast Michigan. Mr. Wilson’s dedication and commitment to Northeast Michigan is widely-praised and well-documented.⁵

The Internet in Northeast Michigan was started, quite literally, in Mr. Glenn Wilson’s backyard. Frustrated by the LEC’s high rates and lack of progress and interest in providing broadband service in rural Northeast Michigan, Mr. Wilson found an innovative way to obtain high-speed Internet connectivity. Mr. Wilson called up the incumbent, wireline provider and ordered a T-1 line to his home. He then erected a tower, assembled the necessary equipment, and built his own network. Thereafter, Mr. Wilson began sharing the Internet with his neighbors. Today, it is M33 Access’ goal to provide Internet service to every resident in Northeast Michigan who requests such service. In certain areas in Northeast Michigan, the term “Internet” is synonymous with M33 Access. One magazine labeled Mr. Wilson as “the guy who brought the 21st century to Northeast Michigan.”⁷ Given his commitment to this area, even in the face of tremendous personal and financial sacrifice, Mr. Wilson could be the “poster child” for a successful and effective rural broadband access strategy.

Not only did Mr. Wilson find an innovative way of deploying the Internet in rural areas, he found a way to do so cost-effectively. To initiate service, the company installs a small antenna, among other receiving equipment, at the customer’s location. The antenna communicates with M33 Access’ access point, which then connects the customer to the Internet through M33 Access’ high-speed backbone. Using this service configuration, the company offers a full range of affordable services to customers, including dial-up Internet, high-speed wireless services, DSL, broadband and T-1 lines. The company also provides digital voice and interconnected voice over Internet protocol (VoIP) telephone services. Michigan Access, M33 Access’ sister company, provides wireline and wireless telephone exchange services.⁸ M33 Access’ network is comprised of over 50 towers that serve as the

⁴ *Id.*

⁵ See M33 Access’ website at <http://www.m33access.com/PressBox.asp> and <http://www.m33access.com/AboutUsHeadlines.asp> to view excerpts from recent news articles regarding M33 Access and Mr. Wilson. Customer testimonials are also available at <http://www.m33access.com/AboutUsTestimonials.asp>.

⁷ TRUE NORTH, *supra* note 3, at 16.

⁸ Michigan Access is the sister company to M33 Access. The telephone services referred to throughout this document are provided solely by Michigan Access under Michigan Access’s tariff. M33 Access provides Internet and other broadband services only, and does not provide telephone or other telecommunications services. Michigan Access is currently licensed to provide local exchange services throughout the state of Michigan. See *In the Matter of the Application of Michigan Access, Inc. for Temporary and Permanent Licenses to Provide Local Exchange Services in All Zone and Exchange Areas Throughout the State of Michigan*, Case No. U-14896 (Michigan PSC Aug. 22, 2006), attached hereto as Attachment 2. On September 11, 2009, Michigan Access submitted an application for designation as an Eligible Telecommunications Carrier (“ETC”) throughout its service area. See *Application of Michigan Access, Inc. for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934*, Case No. 16085 (Michigan PSC Sept. 11, 2009), attached hereto as Attachment 3.

backbone of a wireless grid that covers several thousand square miles throughout rural Northeast Michigan.⁹ It is one of the largest contiguous wireless grids in the world.¹⁰

The M33 Access service model has proven to be an efficient and cost-effective way of rolling-out broadband in rural areas. If implemented across the country, this model could permit rural citizens an opportunity to experience broadband now – as opposed to waiting until the large incumbents to decide to make investments in these areas. As Michigan Governor Jennifer Granholm has stated: “M33 Access is a fast-growing, Michigan-based company that is revolutionizing how broadband can be delivered to users in a cost-effective manner. I am thrilled with the entrepreneurial spirit behind this company.”¹¹

FCC Rules & Proceedings:

The legal issues set forth in this proceeding have been briefed at length by both Allband and Osirus. Yet, when stripped to their core, the real issue here is funding. Washington, DC, and the Federal Communications Commission (“FCC”) are a long way from the rural areas of Northeast Michigan that are the subject of this proceeding. However, the fate of the Internet and telephone access in Northeast Michigan could very well rest in the FCC’s hands. Through the decisions rendered in this proceeding, the Commission will effectively decide which company is entitled to additional funding to pursue its telephone and broadband access roll-out strategy. Both history and the current state of the market in Northeast Michigan unequivocally demonstrate that Michigan Access is the company most qualified, and indeed, most likely, to bring telecommunications services to Northeast Michigan. Accordingly, to the extent that the FCC must make a choice as to which carrier qualifies, or is entitled to such additional funding, then the only possible answer to this question is Michigan Access.

Despite Mr. Wilson’s personal and financial commitment to rural Northeast Michigan, under the current USF funding structure, Mr. Wilson is not able to recoup any of his personal investment, which at least one publication has estimated to be between \$5,000,000 and \$10,000,000 million.¹³ In fact, two companies, namely Allband and Osirus, threaten to step in and claim a stake in Michigan Access’ service areas. These companies both seek waivers of certain FCC rules, which would essentially permit them to claim incumbent status in several areas in rural Northeast Michigan. Presumably, Allband and Osirus are seeking these waivers in order to assume a priority position for USF funding purposes.¹⁴

⁹ See M33 Access, <http://www.m33access.com/WirelessInfo.asp> (last visited Sept. 14, 2009).

¹⁰ *Id.*

¹¹ State of Michigan Broadband Development Authority, Press Release, *\$1.3 Million Loan Advances Governor’s Broadband Goal* (rel. Apr. 22, 2004), attached hereto as Attachment 4.

¹³ TRUE NORTH, *supra* note 3, at 18.

¹⁴ *In re Petition of Allband Communications Cooperative for Waiver of Sections 69.2(bh) and 69.601 of the Commission’s Rules to Allow New Local Exchange Carrier to Participate in National Exchange Carrier Association Tariffs and Pools*, CC Docket No. 96-45 (filed Sept. 5, 2006); *In the Matter of Osirus Communications, Inc. Petition for Waivers of the Commission’s Rules to Participate in NECA Pools and Tariffs and to Obtain Accelerated USF Support*, CC Docket No. 96-45 (filed Oct. 2, 2007). In 2005, Allband received FCC waivers for the Robbs Creek Exchange. See *Petition of Allband Communications These waivers permitted Allband: (1) to receive universal service support based on its own costs; (2) to be treated as an incumbent LEC for*

Contrary to Allband's and Osirus' assertions, however, both Michigan Access and M33 Access already provide services to several customers in the very same areas these companies claim to be "unserved." The following table provides a visual summary of the services currently provided by Michigan Access and M33 Access:

County	Michigan Access				M33 Access	
	POTS Res.	POTS Bus.	PRI	DSO TI	VoIP Res.	VoIP Bus.
Alcona*	6			4	7	
Alpena	1					
Arenac	15					
Bay					1	
Cheboygan*				4		
Chippewa					1	
Crawford	14			22	2	
Emmet				1		
Genesee				4		
Gladwin	2	1		6		
Iosco*	6			21	22	2
Montmorency*	3				1	
Oakland	1			5	61	
Ogemaw*	150	44	75	36	38	
Oscoda*	201		16	50		4
Otsego				3		
Presque Isle*	4					
Roscommon	4	15	96		21	
Shiawassee				2		
Total:	407	60	187	158	154	6

*Portions of this area classified as unserved.

Michigan Access was granted authority to provide basic local exchange service throughout the state of Michigan on August 22, 2006.²⁰ The company began providing telephone services to customers throughout Northeast Michigan almost immediately after its license was granted, and has continuously provided telephone services in this area ever since. Michigan Access has interconnection agreements in place with AT&T and Verizon, and is collocated in one AT&T central office, and four Verizon central offices. By mid-November 2009, the company will add two additional Verizon central offices, bringing its total central office count in the region to seven. Michigan Access currently provides traditional, wireline telephone service ("POTS") to a total of 843 customers throughout Northeast Michigan. In Ogemaw County, Michigan Access overbuilt Verizon's outdated facilities by installing new underground copper and fiber lines.

purposes of receiving universal service support; (2) to participate in NECA tariffs and pools; and (4) to receive universal service support on an accelerated basis. See *In the Matter of Allband Communications Cooperative Petition for Waiver of Sections 69.2(bb) and 69.601 of the Commission's Rules*, WC Docket No. 05-174 (WCB Aug. 11, 2005). Allband seeks to include unserved areas in Oscoda, Ogemaw, Presque Isle, Alcona, Iosco, Gladwin, and Montmorency counties within its existing study area. In a petition filed in 2005, Osirus requested waiver of certain FCC rules to permit it to receive accelerated high-cost loop support payments based on the projected costs of serving these areas. Osirus' petition, which was filed in 2007, seeks virtually the exact same relief requested by Allband. To date, both petitions remain pending before the FCC.

²⁰ *In the Matter of Application of Michigan Access, Inc. for Temporary and Permanent Licenses to Provide Local Exchange Services in All Zone and Exchange Areas Throughout the State of Michigan*, Case No. U-14896 (Michigan PSC Aug. 22, 2006).

Currently, M33 Access provides high-speed Internet access and Voice over Internet Protocol service to numerous residents and businesses throughout Northeast Michigan. Several critical care facilities and agencies rely on its services, including a number of regional police and sheriffs' departments, 911 emergency call centers, medical care facilities, fire departments and dozens of public and private schools, and one community college.²¹ As of 2006, one community college in the region had attributed over \$548,000 in savings directly to its relationship with M33 Access.²² Given its importance to the area, M33 Access is listed as an "essential service" by the Ogemaw County Government.²³ And, in Roscommon County, Mr. Wilson was named "Citizen of the Year," in recognition of his service to the community.

Beyond providing telephone and Internet connectivity, Michigan Access and M33 Access have been beneficial to Northeast Michigan in many other ways. At least one publication noted that M33 Access "opened the floodgates for the kind of economic growth the region has struggled for decades to achieve."²⁴ It is possible that Allband's and Osirus' recent interest in this area is attributable to the economic growth that M33 Access and Michigan Access were instrumental in achieving. This, of course, would make the grant of ILEC status in favor of Allband or Osirus not merely ironic, but also unjust, unreasonable, and contrary to the public interest. To permit a subsequent carrier to come in and strip the incumbent carrier of its service area based solely on a regulatory war of words is a result the universal service funding rules should seek to avoid. To date, M33 Access and Michigan Access have invested millions of dollars to provide facilities-based services throughout Northeast Michigan. To the extent that any funding is available for these areas, Michigan Access should be the first carrier in line to receive those funds.

Allband and Osirus each were granted a license to serve customers in several "unserved" areas in Northeast Michigan nearly two years ago.²⁵ Yet, to date, these carriers have not commenced service to even a single customer in some of these areas. In fact, in this record, both carriers have clearly stated that their plans to serve these areas are on hold.²⁶ Unlike Allband and Osirus, M33 Access and Michigan Access have approached each

²¹ See M33 Access, <http://www.m33access.com/WirelessInfo.asp> (last visited Sept. 14, 2009).

²² See Kirtland Community College, *Kirtland Internet Services, Past, Present, Future* (2007), at 7.

²³ See M33 Access, <http://www.m33access.com/WirelessInfo.asp> (last visited Sept. 14, 2009).

²⁴ TRUE NORTH, *supra* note 3, at 18.

²⁵ See In the Matter of the Application of Allband Communications Cooperative for a License to Provide Basic Local Exchange Service in Seven Currently Unserved Areas in Alcona, Alpena, Presque Isle, Montmorency, Gladwin, Ogemaw, and Oscoda Counties, Case No. 15385 (Michigan PSC Oct. 25, 2007) ("Allband License Expansion Order"); In the Matter of the Application of Osirus Communications, Inc. for a License to Provide Basic Local Exchange Services in Eight Currently Unserved Areas in the Lower Peninsula of Michigan, Case No. 15356 (Michigan PSC Sept. 28, 2007) ("Osirus License Expansion Order").

²⁶ See Letter to Michael Copps, Interim FCC Chairman, FCC, from Ron K. Siegel, General Manager, John M. Reigle, President, Allband Communications Cooperative, CC Docket No. 96-45 (dated May 11, 2009), at 2 (stating that it "cannot proceed without a decision from the FCC."); Letter to Marlene H. Dortch, Secretary, FCC, from Tom Karalis, Fred Williamson & Associates, Inc., CC Docket No. 96-45 (dated March 25, 2009), Attachment at p. 9 ("...without knowing the outcome of this Petition, any further plans for expansion to meet the needs of customers in unserved areas will have to be put on hold"); Comments of Allband Communications Cooperative in Opposition to Petition for Waivers and Allband Request for Clarification, CC Docket No. 96-45 (filed Jan. 3, 2008) (stating that FCC delay "will

obstacle in their paths as yet another challenge to overcome. Together, these companies have rolled-out both broadband and telephone services to rural Northeast Michigan in the face of obstacles that would have been deemed insurmountable by many other companies. M33 Access and Michigan Access willingly assumed such risks because the lives of the citizens of Northeast Michigan literally depend upon this level of dedication.

Allband's failure to provide service in certain areas is especially perplexing given that the company was approved for a USDA loan for over \$8,000,000 million in 2005.²⁷ In its Rural Development Progress Report for 2005-2006, the USDA noted that Allband's loan would permit the company to serve 309 residential subscribers, 18 commercial business subscribers, and 290 gas well subscribers.²⁸ To date, however, over four years after its USDA loan was approved, it is Michigan Access' understanding that Allband serves only 88 customers.

Considering that neither Allband nor Osirus has rolled out service to these areas since they were licensed to do so two years ago, Michigan Access believes that neither company should be permitted to stake any claim whatsoever in the "unserved" areas. On this point, language from the Michigan PSC orders granting a license to each carrier is relevant. Both orders include the following language:

[T]he expansion of the license is conditioned upon the provision of service to customers in the added exchanges *within a reasonable time*. Failure to comply fully with those procedures may result in revocation of the license and other penalties.²⁹

Allband's and Osirus' failure to provide any services to any customers in the added exchanges two years after each carrier was granted authority to do so does not satisfy the "within a reasonable time" requirement set forth in the order. Michigan Access, therefore, submits that Allband's and Osirus' licenses should be revoked on that basis.

Michigan Access further notes that a license granted under the Michigan Telecommunications Act is premised on a finding by the Michigan PSC that the applicant "intends to provide service within 1 year from the date the license is granted."³⁰ As noted, in the two years since they received authority to serve several areas in rural Northeast Michigan, neither Allband nor Osirus has provided service to customers in these areas. Therefore, it is clear that neither Allband nor Osirus intended to serve these areas within the one-year timeframe provided under the statute. For this reason, the operating licenses of both carriers should be declared null and void. Both Allband and Osirus have effectively

deny Allband the opportunity to move forward with the provisioning of service to these unserved areas..."); Letter to Gary Seigel, FCC, from Michael R. Witulski (dated May 21, 2008), at 1 ("Osirus has temporarily placed its work on this project on hold pending the Commission's resolution of this matter.").

²⁷ USDA, *Conner Announces \$34.6 Million in Rural Technology Development Funds for Rural America*, Release No. 0317.05 (Aug. 18, 2005).

²⁸ USDA, Rural Development, 2005-2006 Progress Report (2006), at 24. Retrieved Sept. 17, 2009 from http://www.rurdev.usda.gov/rd/pubs/2005_06_Prog_Report.pdf.

²⁹ Allband License Expansion Order at 3 (emphasis added); Osirus License Expansion Order at 2 (emphasis added).

³⁰ MICH. COMP. LAWS § 484.2302(1)(a)(2009).

abandoned Northeast Michigan, which makes their bickering as to which among them is entitled to “incumbent” status in this area difficult to fathom.

In reaching a decision regarding incumbency, Michigan Access urges the Commission to render its decision based on the facts, and the state of the markets at issue. Indeed, the Commission should reject outright Allband’s and Osirus’ positions that this proceeding should be decided on the basis of which carrier wins the battle of “firsts.” Allband states that it is entitled to incumbent status in these areas because it was the first carrier to apply for and receive FCC waivers of certain rules.³¹ Osirus, on the other hand, claims incumbent status because it was the first carrier to apply for, and subsequently receive, a CLEC license, and designation as an ETC in Michigan.³² Deciding this matter on the basis of the regulatory timeline, however, could lead to the anomalous result where a true incumbent like Michigan Access could be stripped of its service areas for no other reason than the fact that another company decided to pursue a roll-out strategy through the regulatory and legal processes, while the true incumbent in the area was instead focused on actually serving customers.

The record in this proceeding demonstrates that both Allband and Osirus “plan” to serve these areas at some unspecified future date. While these companies remain in the planning stage, Michigan Access is already serving customers in these very same areas. Therefore, as both a legal and factual matter, to the extent that the FCC and NECA can recognize only one incumbent in Northeast Michigan, this status should be granted to the carrier that has moved beyond the planning stage, and has already demonstrated that service to these areas is technically and economically feasible by successfully serving customers in these areas. In rural Northeast Michigan, the only carrier that satisfies these criteria is Michigan Access.

Summary & Conclusion:

The Commission’s current universal service funding structure favors an incumbent LEC that provides service through wire-based methods and technology. Wireline, however, has proven to be an outdated, cost-inefficient, and ineffective method of providing service in remote, rural areas. Under the traditional model, rural citizens are at the mercy of wireline-based incumbents who, in their sole discretion, decide whether or not to roll-out services, even including basic telephone service, to rural areas. Placing the future of broadband in the hands of the incumbent, wireline-based carriers is tantamount to denying rural citizens access to the broadband world. The FCC is undoubtedly well aware of the countless excuses set forth by the incumbent, wireline-based carriers as to why broadband in rural areas is not feasible.

The citizens of rural America are literally dying for both basic and advanced communications services. Broadband access in rural areas cannot wait. For this reason, the Commission should no longer wait on the incumbents to roll out broadband strategies to these areas. It is time for the Commission’s rules to catch up to the reality of how

³¹ See Comments of Allband Communications Cooperative in Opposition to Petition for Waivers and Allband Request for Clarification, CC Docket No. 96-45 (filed Jan. 3, 2008), at 5.

³² See Osirus Communications, Inc. Comments in Reply to Allband Communications Cooperative’s Comments, CC Docket No. 96-45 (filed Jan. 18, 2008), at 2.

broadband will most effectively be rolled out to rural America. The current rules assume that broadband will miraculously spring forth from an incumbent, wireline carrier using wire-based technology and strategies. M33 Access and Michigan Access have proven, however, that for rural America, the opposite is most likely to be true. M33 Access rolled out broadband first, and then, due to its success in this area, formed Michigan Access in order to begin offering telephone service to its subscribers. Under any reasonable interpretation of the term “incumbent” Michigan Access is, indeed, the only such carrier in Northeast Michigan. Through their unique service model, Michigan Access and M33 Access have demonstrated an alternative method of bringing broadband services to rural areas. In direct contravention to the ILECs’ representations, M33 Access and Michigan Access have demonstrated that it is both economically and technically feasible to serve rural customers cost-effectively.

Michigan Access has taken up the cause to bring both Internet and telephone access to rural Michigan. However, even the most well-intentioned plans are limited by the force of reality. Additional funding is, indeed, important and necessary – as funding from any source will permit Michigan Access to roll out service to more customers under a more accelerated timeframe. For this reason, through its parent company, Custom Software, Inc., Michigan Access has submitted an application under the Broadband Initiatives Program (BIP),³⁶ and will also pursue any remedies available at the FCC or other agencies that will enable it to continue serving the citizens of rural Michigan. However, unlike the assertions of both Allband and Osirus, Michigan Access is committed to the residents of Northeast Michigan under any circumstances. Michigan Access will continue to seek ways – using its current strategies, or by developing new and perhaps even more creative ones – to ensure that each resident of the state of Michigan has access to telecommunications services and the broadband world. For Michigan Access, universal service and other funding would help the company serve more customers *now*. However, Michigan Access’ commitment to telephone and broadband service in Northeast Michigan will remain strong, regardless of any decisions relative to funding.

For the reasons set forth herein, Michigan Access steadfastly opposes any efforts by Allband and Osirus to obtain an advantage for universal service funding or other purposes by claiming a position of incumbency in certain rural areas in Northeast Michigan. As this letter demonstrates, and as will be further supported in Michigan Access’ FCC waiver petition, M33 Access and Michigan Access already are providing both broadband and telecommunications services in the very same areas both Allband and Osirus claim to be unserved. In order to maintain its incumbent status, and to seek additional funding to continue its highly successful broadband and telephone access strategies in these areas, Michigan Access intends to file its own petition for waiver with the FCC. Until such time as the Commission considers all of the evidence and issues presented in these proceedings,

³⁶ See H.R. 1--111th Congress: American Recovery and Reinvestment Act of 2009 (“ARRA”). (2009). In GovTrack.us (database of federal legislation). Retrieved Sep 16, 2009, from <http://www.govtrack.us/congress/bill.xpd?bill=h111-1>. The Notice of Funding Availability (“NOFA”) for grants and loans issued pursuant to the ARRA appeared in the Federal Register on July 9, 2009. See Department of Agriculture, Rural Utilities Service, Broadband Initiatives Program (“BIP”), Department of Commerce, National Telecommunications Industry Association, Broadband Technology Opportunities Program (“BTOP”), 47 Fed. Reg. 33,104-33,134 (2009). Custom Software, Inc. d/b/a M33 Access submitted an application under the Rural Utilities Services’ Broadband Initiatives Program. A summary of M33 Access’ application may be viewed at <http://www.ntia.doc.gov/broadbandgrants/applications/results.cfm?org=custom+software&keywords=&projtype=&program=&state=> (last visited Sept. 16, 2009).

Secretary Marlene H. Dortch
September 18, 2009
Page 9

including the supporting documentation Michigan Access will submit as part of its waiver petition, Michigan Access submits that the petitions for waiver filed by Allband and Osirus should be denied.

Should you have any questions regarding this matter, or would like additional information, please do not hesitate to contact the undersigned.

Respectfully submitted,

/s/ Audrey Glenn

Audrey Glenn

Counsel to Michigan Access, Inc. and
Custom Software, Inc. d/b/a M33 Access